IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1939

No. 193

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

WATERMAN STEAMSHIP CORPORATION
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF AMERICAN FEDERATION OF LABOR, AMICUS CURIAE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The American Federation of Labor, an unincorporated association, represents to this Honorable Court that the intervenor, The International Seamen's Union, before the National Labor Relations Board, was chartered by and was affiliated with the American Federation of Labor, having exclusive jurisdiction of all seamen constituting the unlicensed personnel of the American merchant marine. Therefore, the American Federation of Labor, the parent organization, which is vitally interested in the legal questions involved in this case, respectfully asks permission of this Honorable Court to file this brief as *amicus curiae*

in opposition to the petition for writ of certiorari, petitioned for by the National Labor Relations Board to be issued to the United States Circuit Court of Appeals for the Fifth Circuit to review the judgment of that Court entered on April 11, 1939.

The Circuit Court of Appeals, in its decision and in an opinion written by Mr. Justice McCord, granted the petition of the Waterman Steamship Corporation to vacate the order of the National Labor Relations Board (except as to one employee).

Because the American Federation of Labor believes that the decision and judgment of the Circuit Court of Appeals vacating this order of the National Labor Relations Board are fully supported by the facts as shown in the Record, and because the American Federation of Labor believes that the decision and order of the National Labor Relations Board were not based on the substantial evidence required by the law to support such an order, and because the Circuit Court of Appeals, in its decision and judgment, gave effect to a contract between the International Seamen's Union, chartered by and affiliated with the American Federation of Labor, and the Waterman Steamship Corporation, and because the American Federation of Labor believes that the validity of the contract between employers and unions should be upheld by the courts, the American Federation of Labor is impelled to ask leave to file this brief in opposition to the petition for a writ of certiorari and in support of the position taken by the respondent, the Waterman Steamship Corporation, in its brief and argument in opposition to the petition for writ of certiorari.

Furthermore, there is nothing in the petition praying for the writ of certiorari now presented to this Court which brings this case within the classes named in Rule 38 of this Court under which a petition for a writ of certiorari will be granted nor does petitioner show any special or important reasons why this Court should undertake a study of this voluminous Record in order to review the decision of

the Circuit Court of Appeals, which, to the American Federation of Labor, was required by the law and by the record. The American Federation of Labor filed a brief with the Circuit Court of Appeals and its position in that brief was supported fully by the decision of the Circuit Court of Appeals.

STATEMENT OF FACTS

The proceedings before the National Labor Relations Board in this case are adequately set out in the brief and argument in opposition to the petition for writ of certiorari by the Waterman Steamship Corporation, the respondent.

The International Seamen's Union of America (hereinafter sometimes called the "I. S. U.") was organized in 1892, received a charter from and affiliated with the American Federation of Labor, having exclusive jurisdiction over the unlicensed persons employed on board ships, including bona-fide seamen, deck engineers and stewards departments. On January 1, 1935, the I. S. U., as the representative of its membership, entered into a written agreement with approximately ninety Atlantic and Gulf steamship companies, including the Waterman Steamship Corporation, and that agreement was amended in 1936. The contract was in force and effect between the parties thereto on the date of the alleged discharge of the seamen named in the amended complaint and on the date of the amended complaint issued by the Board against the respondent. Because of the existence of the aforesaid agreement and of the necessity of protecting the said agreement in the hearings before the N. L. R. B., the I. S. U. (then directed by a reorganization committee), moved to intervene in the proceedings at the hearing on the amended complaint held before the Examiner of the Board and the motion to intervene was granted.

The agreement between the petitioner and the I. S. U. specifically provides as follows:

"Section 1. It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

Mr. Justice McCord's opinion is a very clear and a very accurate summary of the testimony on which the Board based its order, and clearly shows there was no substantial evidence to support this order of the Board holding that the respondent had violated the National Labor Relations Act. Particularly the Record supports the definite statement of Mr. Justice McCord that:

"The evidence is virtually without dispute that repairs on the S. S. Bienville and S. S. Fairland had been planned by the company long before the crews changed their membership from one union to another. When the ships were laid up for repairs it was only for reasons of economy, we think, that the crews were discharged. There was no effort on the part of the company to make war on the unions. The evidence does not even point in that direction. . . . The finding of the Board that the ships were laid up as an excuse to get rid of the men is based on suspicion and not on the evidence.

"When the time came to employ crews for the Bienville and Fairland after they had been repaired, the company was bound under its contract to select its unlicensed employees from the membership of the International Seamen's Union of America. The Board by its order would penalize the company for keeping this contract."

ARGUMENT

The clause relied upon in the contract between the ship owners and the International Seamen's Union was a concession by the steamship lines to this union and was a notable victory for the members of the union. This contract was executed prior to the enactment of the National Labor Relations Act. There is nothing, however, in the provisions of the National Labor Relations Act which would invalidate or modify this agreement. There is no question but that this contract was valid, binding and in force at the time of the discharge of the employees and thereafter and at the time of the issuance of the amended complaint. A similar contract embodying the identical language of the foregoing quoted clause was upheld as binding and valid by this Court in its decision in the case of *The Peninsular & Occidental Steamship Company* v. *N. L. R. B.*, (Fifth C. C. A.) 98 Fed. (2d) 411.

We particularly approve the decision and the language of the opinion of that Honorable Court in the P. & O. SS. decision as follows:

> "The contract with the International Seamen's Union was a valid, existing agreement at the time the crews were discharged and no other bargaining unit had been designated. Under its terms the company was obliged to give its members preference in reemployment."

The crews of these two ships, by deserting the International Seamen's Union, accordingly lost the benefits of the contract between the union and the steamship company. Under that contract the company was obligated to give preferential treatment to members of the International Seamen's Union.

Employment on American steamships is different in one very important feature from employment in other industries in that seamen's employment is regulated by shipping articles and their employment ends when the shipping articles are terminated. Shipping articles are in the nature

of an individual contract which a seaman, who is deprived of the benefits of a collective agreement, has to rely upon. For years the American Federation of Labor has diligently endeavored to have enacted Federal legislation which would make sailors free men and give them the right to leave the employment of a vessel at stated times, as is now accomplished by shipping articles. The employment of the members of these crews was terminated by the expiration of the shipping articles; and the steamship Bienville having been laid up in Mobile for repairs and the steamship Fairland, on reaching Mobile, having been put on dry dock according to plans made by the company long before the crews changed their union membership, the respondent, when it was ready to put these two steamers in service again, was compelled to observe its contractual obligations with the International Seamen's Union to give preference in employment of members of that union. This contract the Circuit Court of Appeals upheld as valid and cited in support of its opinion on the validity of the contract its own decision in the case of The Peninsular & Occidental Steamship Company vs. the National Labor Relations Board, 98 F. (2d) 411,—a case in which certiorari was denied by this Court, 305 U. S. 653, 83 L. ed. 224. Furthermore, the International Seamen's Union put the Waterman Steamship Corporation on notice that if it violated this contract it would be held in damages (page 506, Record).

No evidence was introduced at the earing before the Trial Examiner in the Waterman Steamship case tending to impugn the validity of this contract and the Board in its decision made no ruling on the validity of that contract, and there is nothing in the decision or the order of the Board suggesting that any contention is made that this contract was not entirely valid and in full force and effect.

The sole question therefore was whether vacancies had occurred, in filling which the company under the contract was required to give preference of employment to the I. S. U.

The company admits that vacancies occurred and contends that these vacacies were created by the necessary layoff and the termination of employment under the shipping articles between each member of the crew and the master of the ship. If the expiration of the shipping articles terminated the employment, there is no question but that vacancies existed.

Therefore, if the expiration of its shipping articles did in fact terminate the employment, as seems to us to be clearly the case, the relation of employer and employee had ceased to exist (even if ordinarily quickly resumed), and if there were at the time an existing valid contract between the International Seamen's Union and the shipping company, then the company had no alternative but to give preference in the reemployment of crews for these ships to members of the International Seamen's Union.

The two salient points in this case are the provisions in the contract between the company and the I. S. U., under which preference was to be given to members of the I. S. U. in filling the crews of the unlicensed personnel, and the shipping articles, under which contracts of employment are terminated upon their expiration and the reciprocal rights and obligations of both the shipping company and the seamen under these articles.

The filling of these vacancies by the Waterman Steamship Corporation in fulfillment of its contract with the I. S. U., a valid contract, and at the demand of the I. S. U., was not discriminating in its employment policy or in any sense a violation of the National Labor Relations Act. The Board's decision, in our opinion, holding the contrary, is not supported by substantial evidence—in fact, is not supported by any evidence at all—in view of the legal construction necessarily placed on shipping articles. Therefore the reasoning in the remainder of the Board's decision becomes mere rationalization.

With regard to that portion of the decision of the Circuit Court of Appeals dealing with the finding by the Board

against the respondent for refusal to issue passes to representatives of the National Maritime Union, affiliated with the C. I. O., to come aboard its vessels to proselyte and organize its employees, the opinion of Mr. Justice McCord is not subject to attack or criticism. The soundness of his views and those of the Circuit Court are ably set forth in the brief filed with this Court by attorneys for the respondent, pages 22-24; and the American Federation of Labor specifically supports this argument, which shows definitely that there was no discrimination by the respondent's refusal to issue passes and hence no violation of the National Labor Relations Act.

CONCLUSION

The American Federation of Labor is of the opinion that the Circuit Court of Appeals for the Fifth Circuit committed no error in its decision which was in all respects proper, and that the petition for a writ of certiorari filed in this Court does not state a case in which a petition for a writ of certiorari will be granted, and that the petition for the writ of certiorari should be denied.

Respectfully submitted,

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